

5. Disclosure of Flood Risk Information Prior to Real Estate Transactions – A significant barrier to addressing the nation's flood risk is home buyers' and renters' lack of awareness about flood risk when they complete real estate and lease transactions. This proposal would increase clarity and provide uniformity regarding disclosures by requiring participating communities to establish certain minimum flood risk requirements for sellers and lessors before residential transactions close as a condition for participation in the NFIP.

Legislative text:

SEC. ___. DISCLOSURE OF FLOOD RISK INFORMATION PRIOR TO REAL ESTATE TRANSACTIONS.

(a) The National Flood Insurance Act of 1968 is amended by inserting the following new section after section 1323 (42 U.S.C. 4030)--

“SEC. 1323A. DISCLOSURE OF FLOOD RISK INFORMATION PRIOR TO REAL ESTATE TRANSACTIONS. (42 U.S.C. 4030a)

“(a) In general.—

Two years after enactment of this Act, no new flood insurance coverage may be provided under this title for any real property unless an appropriate public body has imposed, by statute or regulation, a duty on any seller or lessor to provide to any purchaser or lessee (with respect to a lease for a term that is not shorter than 60 days) of the property a property flood hazard disclosure that the Administrator has determined meets the requirements of subsection

(b). The Administrator may extend this deadline to no more than 5 years after enactment of this Act, upon receiving a request from an appropriate public body that is supported by a description of:

“(1) its efforts taken to fulfill the requirement for participation in the national flood insurance program mandated under this section;

“(2) any additional action required to fulfill the requirement under this section; and,

“(3) an estimated completion date.

“(b) Disclosure requirements.—

“(1) REQUIREMENTS FOR SELLERS.— Subject to any exceptions or limitations authorized by the Administrator, any seller of residential real estate shall provide to the purchaser a flood hazard disclosure that —

“(A) is made in writing;

“(B) discloses any actual knowledge of the seller of any—

“(i) prior physical damage caused by flood to a structure located on the property;

“(ii) prior insurance claim for a loss covered under the national flood insurance program or private flood insurance with respect to the property;

“(iii) previous notification regarding the designation of the property as a repetitive loss structure or severe repetitive loss structure (as defined in section 1366(h)); and

“(iv) Federal legal obligation to obtain and maintain flood insurance running with the property; and

“(C) discloses to the maximum extent feasible, in a manner to be determined by the Administrator:

“(i) the flood risk associated with the property as indicated in flood hazard data maintained by the Administrator under this Act and;

“(ii) the availability of and approximate cost of flood insurance for the property; and

“(D) is delivered by, or on behalf of, the seller to the purchaser before the purchaser becomes obligated under any contract to acquire the property.

“(2) REQUIREMENTS FOR LESSORS.— Subject to any exceptions or limitations authorized by the Administrator, any lessor of a residential rental property with a lease for a term that is not shorter than 60 days shall provide to the lessee a flood hazard disclosure that -

“(A) is made in writing;

“(B) discloses any actual knowledge of the lessor—

“(i) of any Federal legal obligation to obtain and maintain flood insurance running with the property;

“(ii) regarding any prior physical damage caused by flood to the unit being leased; and

“(iii) of the availability of coverage under this title for contents located in a structure on the property; and

“(C) is delivered by, or on behalf of, the lessor to the lessee before the lessee becomes obligated under any contract to lease the property.

“(3) RULE OF CONSTRUCTION. — Nothing in this section may be construed as preventing a State, local, territorial or tribal government from adopting disclosure requirements in addition to the requirements of this section.”.

(b) Conforming Amendments.

Section 1305(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4012(c)) is amended—

(1) in paragraph (1), by striking “, and” at the end and inserting “;”;

(2) in paragraph (2), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(3) given satisfactory assurance that, not later than five years after enactment of the Act, property flood hazard disclosure requirements will have been adopted for the state or area (or subdivision) that meet the requirements of section 1323A.”.

Analysis:

This legislative proposal would require participating communities to establish certain minimum flood risk reporting requirements for sellers and lessors prior to transactions as a condition for participation in the National Flood Insurance Program (NFIP). A significant barrier to addressing the nation’s flood risk is home buyers’ and renters’ lack of awareness about flood risk when they complete real estate and lease transactions. FEMA sees a strong public policy interest in there being an affirmative obligation on the seller or lessor of a residential property to disclose information about flood risk to prospective buyers or lessees. This approach would rely on the initiative of states and communities rather than requiring FEMA to directly regulate real estate transactions.

Requiring sellers/lessors to disclose any actual knowledge of their property’s flood risk would empower buyers/lessees to make informed decisions. Consistent minimum reporting standards would also provide clarity and reduced legal exposure for the real estate industry as they communicate with consumers around the varied flood risks in communities across the country.

Comparative type:

National Flood Insurance Act of 1968

SEC. 1323A. DISCLOSURE OF FLOOD RISK INFORMATION PRIOR TO REAL ESTATE TRANSACTIONS. (42 U.S.C. 4030A)

(a) In general.— Two years after enactment of this Act, no new flood insurance coverage may be provided under this title for any real property unless an appropriate public body has imposed, by statute or regulation, a duty on any seller or lessor to provide to any purchaser or lessee (with respect to a lease for a term that is not shorter than 60 days) of the property a property flood hazard disclosure that the Administrator has determined meets the requirements of subsection (b). The Administrator may extend this deadline to no more than 5 years after enactment of this Act, upon receiving a request from an appropriate public body that is supported by a description of:

- (1) its efforts taken to fulfill the requirement for participation in the national flood insurance program mandated under this section;**
- (2) any additional action required to fulfill the requirement under this section; and**
- (3) an estimated completion date.**

(b) Disclosure requirements.—

(1) REQUIREMENTS FOR SELLERS.— Subject to any exceptions or limitations authorized by the Administrator, any seller of residential real estate shall provide to the purchaser a flood hazard disclosure that —

(A) is made in writing;

(B) discloses any actual knowledge of the seller of any—

(i) prior physical damage caused by flood to a structure located on the property;

(ii) prior insurance claim for a loss covered under the national flood insurance program or private flood insurance with respect to the property;

- (iii) previous notification regarding the designation of the property as a repetitive loss structure or severe repetitive loss structure (as defined in section 1366(h)); and
- (iv) Federal legal obligation to obtain and maintain flood insurance running with the property; and

(C) discloses to the maximum extent feasible, in a manner to be determined by the Administrator:

- (i) the flood risk associated with the property as indicated in flood hazard data maintained by the Administrator under this Act and;
- (ii) the availability of and approximate cost of flood insurance for the property; and

(D) is delivered by, or on behalf of, the seller to the purchaser before the purchaser becomes obligated under any contract to acquire the property.

(2) REQUIREMENTS FOR LESSORS.— Subject to any exceptions or limitations authorized by the Administrator, any lessor of a residential rental property with a lease for a term that is not shorter than 60 days shall provide to the lessee a flood hazard disclosure that –

(A) is made in writing;

(B) discloses any actual knowledge of the lessor—

- (i) of any Federal legal obligation to obtain and maintain flood insurance running with the property;
- (ii) regarding any prior physical damage caused by flood to the unit being leased; and
- (iii) of the availability of coverage under this title for contents located in a structure on the property; and

(C) is delivered by, or on behalf of, the lessor to the lessee before the lessee becomes obligated under any contract to lease the property.

(3) RULE OF CONSTRUCTION. — Nothing in this section may be construed as preventing a State, local, territorial or tribal government from adopting disclosure requirements in addition to the requirements of this section.

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SEC. 1305. Scope of program and priorities. (42 U.S.C. 4012)

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(c) Availability of insurance in States or areas evidencing positive interest in securing insurance and assuring adoption of adequate land use and control measures.

The Administrator shall make flood insurance available in only those States or areas (or subdivisions thereof) which he has determined have-

- (1) evidenced a positive interest in securing flood insurance coverage under the flood insurance program;~~and;~~
- (2) given satisfactory assurance that by December 31, 1971, adequate land use and control measures will have been adopted for the State or area (or subdivision) which are consistent with the comprehensive criteria for land management and use developed under section 4102 of this title, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling flood elevations is available;~~;~~ and

(3) given satisfactory assurance that, not later than five years after enactment of the Act, property flood hazard disclosure requirements will have been adopted for the state or area (or subdivision) that meet the requirements of section 1323A.

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